

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Escrow Agent License of:

3 **FINANCIAL TITLE COMPANY**
4 5650 Sunrise Blvd., Suite 150
5 Citrus Heights, CA 85610

6 Respondent.

No. 09F-BD011-BNK

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

7
8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
9 record in this matter, including the Administrative Law Judge Decision attached and incorporated
10 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
11 Law and Order as follows:

12 **ORDER**

13 IT IS ORDERED that Respondent's Escrow Agent License Number EA 0907018 is
14 revoked effective as of the date of this Order.

15 IT IS FURTHER ORDERED that a civil money penalty in the amount of twenty thousand
16 dollars (\$20,000.00) under A.R.S. § 6-132, a late fee of one thousand one hundred fifty dollars
17 (\$1,150.00) under A.R.S. § 6-816(B), and an examination fee in the amount of one thousand three
18 hundred sixty-five dollars (\$1,365.00) under 6-122(B)(3) is assessed.

19 **NOTICE**

20 The parties are advised that this Order becomes effective immediately and the provisions of
21 this Order shall remain effective and enforceable except to the extent that, and until such time as,
22 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
23 Superintendent or a court of competent jurisdiction.

24 DATED this 20th day of November, 2008

25 
26 Felecia Rotellini
27 Superintendent of Financial Institutions
28

1 ORIGINAL filed this 20th day of
Nov, 2008 in the office of:

2 Felecia Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: June Beckwith
6 2910 North 44th Street, Suite 310
7 Phoenix, Arizona 85018

8 COPY of the foregoing mailed/hand delivered
9 This same date to:

10 Diane Mihalsky, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Craig Raby, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Richard Fergus, Licensing Division Manager
20 Peggy Prill, Senior Examiner
21 Arizona Department of Financial Institutions
22 2910 N. 44th Street, Suite 310
23 Phoenix, AZ 85018

24 AND COPY MAILED SAME DATE by
25 Certified Mail, Return Receipt Requested, to:

26 Jerrold G. Hauptman
27 Owner
28 Mercury Companies, Inc.
1515 Arapaho Street
Tower 1, Suite 1400
Denver, Colorado 80202

29 BY: 

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of the Escrow Agent License
4 of:

5 **FINANCIAL TITLE COMPANY**
6 5650 Sunrise Blvd., Suite 150
7 Citrus Heights, CA 95610

8 Respondent.

No. 09F-BD011-BNK

**ADMINISTRATIVE
LAW JUDGE DECISION**

9 **HEARING:** October 10, 2008 at 9:00 a.m.

10 **APPEARANCES:** The Arizona Department of Financial Institutions appeared
11 through Craig A. Raby, Esq., Assistant Attorney General; Respondent Financial Title
12 Company did not appear.

13 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

14
15 **FINDINGS OF FACT**

16 **BACKGROUND AND PROCEDURE**

17 1. The Arizona Department of Financial Institutions ("the Department") has issued
18 Escrow Agent License No. EA 0907018 to Respondent Financial Title Company

19 2. On August 12, 2008, the Department issued an Order of Summary Suspension
20 and Notice of Hearing to Revoke Respondent's Escrow Agent License ("Notice of
21 Hearing"), which set a hearing on October 10, 2008 at 9:00 a.m. The Notice of Hearing
22 charged violations of A.R.S. §§ 6-832(A) and (B), 6-123(3), and 6-837(B), which provided
23 cause for revocation under A.R.S. § 6-817(A)(2) and (8), and gave notice of possible
24 assessments of a civil penalty under A.R.S. § 6-132, late fees under A.R.S. § 6-816(B),
25 and an examination fee under A.R.S. § 6-125(B)(4) for the examination that the
26 Department conducted under A.R.S. § 6-122(B)(3).¹

27
28 ¹ The Department's Notice of Hearing also cited A.R.S. § 6-131 as authority for this disciplinary matter.
29 Because that statute refers to the Department's ability to sue and defend in "actions," which Arizona courts
30 have determined do not include administrative hearings, the Administrative Law Judge does not use this
statute as authority in her recommendation to the Superintendent of the Department in this matter. See
Simple v. Tri-City Drywall, Inc., 172 Ariz. 608, 611-612, 838 P.2d 1369, 1372-73 (App. 1992) (Prevailing
party in administrative claim before Registrar of Contractors was not entitled to attorney's fees from its
opponent under A.R.S. § 12-341.01(A) because administrative hearing is not an "action").

3. A hearing was held in the Office of Administrative Hearings, an independent state agency, before the undersigned Administrative Law Judge on October 10, 2008. Although the beginning of the duly noticed hearing was delayed fifteen minutes to allow Respondent additional travel time, it did not appear, through a duly authorized employee or attorney, did not contact the Office of Administrative Hearings to request a continuance or that the time for the hearing be further delayed, and did not present any evidence to defend its license.

4. The Department appeared through its attorney, presented the testimony of its employees Escrow Examiner Peggy Prill and Assistant Superintendent Thomas J. Giallanza and had admitted into evidence fourteen exhibits.

HEARING EVIDENCE

5. Respondent is a California corporation.

6. Respondent is a wholly owned subsidiary of Mercury Companies, Inc. ("Mercury").

7. On April 29, 2008, Hon Chan, Mercury's Vice President and Counsel, requested that the Department extend the time for Respondent to file an audited financial statement. Ms. Prill testified that the Department had denied the request.

8. On June 16, 2008, the Department received Respondent's audited financial statement for the year 2007. The audited financial statement had been due by the end of April 2008 and was 46 days late.

9. On July 30, 2008, the Department received a copy of an e-mail from Jerrold G. Hauptman, the Chairman of Mercury, which informed Mercury's and its subsidiaries' employees that it would no longer fund operations in Arizona, Texas, and California, effective immediately. Mercury's website conveyed the same information.

10. Ms. Prill testified that she was concerned and went to First American Title Insurance Company and Arizona Title in Phoenix, to whom she had heard that Respondent had assigned at least some of its accounts, to obtain additional information. First American Title Insurance Company had stepped in to take over the accounts of other escrow agent licensees who had been owned by Mercury.

11. On August 4, 2008, Ms. Prill sent a letter to Ivy Anderson, Respondent's president, requesting that Respondent surrender its license under A.R.S. § 6-838.

1 Because the Department was required to conduct an investigation before accepting
2 Respondent's license, Ms. Prill's letter requested that Respondent provide the following
3 information:

- 4 1. A certified copy of the resolution of the escrow agent's
5 board of directors or a verified statement indicating its
6 intent to surrender the escrow agent license.
- 7 2. A copy of the final reconciliation for all escrow bank
8 accounts including copies of the reconciliation form, bank
9 statement, outstanding checks list, deposit in transit list,
10 trial balance of escrows and any adjusting entries.
- 11 3. A list of escrow bank accounts transferred to First
12 American Title Insurance Company with copies of the
13 checks, evidencing the transfer of the escrow funds to
14 First American Title Insurance Company.
- 15 4. A list of the open and closed escrow account files
16 transferred to First American Title Insurance Company.
- 17 5. A statement indicating that no escrow business has been
18 accepted since the effective closing date. (July 29, 2008)
- 19 6. A copy of the letter, advising them of the transfer of
20 escrow accounts to First American Title Insurance
21 Company, sent to the parties of the open escrows.
- 22 7. The original escrow agent license.
- 23 8. A report of the arrangements made for storage of the
24 closed escrow files. This information should include a list
25 of all the files placed in storage, the location of the files
26 and the name of the person to contact for retrieval.
- 27 9. If applicable, final payment to the Arizona Escrow
28 Recovery fund for the last quarter.
- 29 10. Annual audited financial statements for the year ended
30 December 31, 2007 and the most recent semi-annual
financial statements.
11. The assignment of Transfer of Escrow Files and Related
Banking Information and Authorization to Access Office

Locations and the Assignment of Escrow Accounts signed
and dated by First American Title Insurance Company.

12. Ms. Prill sent copies of her August 4, 2008 letter to Mr. Hauptman, Mercury's president; Hon Chan, Mercury's Senior Vice President and Counsel; and Patty Hauptman, Mercury's CEO; and Walter Fizzsimmons, Mercury's CFO. The Department had admitted into evidence signed certified mail receipts that indicated that the copies of the letter were received by the high officials of Mercury. Ms. Prill testified that the Department received the letter that had been addressed to Ivy Anderson marked "Return to Sender."

13. On August 4, 2008, Ms. Prill sent another copy of her August 4, 2008 letter to Mr. Chan via e-mail.

14. Ms. Prill testified that she did not receive any more of the requested records from Respondent, Mercury, First American Title Insurance Company, or anyone else.

15. On August 5, 2008, the Department's Financial Institutions Examiner Thomas C. Fink sent an e-mail to Mercury's CEO Ms. Hauptman, in relevant part as follows:

We need to know the status of all escrow records for Arizona Title Agency, Inc., Financial Title Company, Financial Title Company, and Security Title Guaranty Co. All of these companies are licensed as escrow agents in Arizona. We have sent a prior letter to you pertaining to the four companies listed above. Please see the attachments to this e-mail for reference. In addition, please respond to the items listed below. As in the letter previously sent, we need this information by 5:00 p.m. August 11, 2008.

1. Where are the files located? At branch offices and/or central warehouse?
2. Who will be taking responsibility and custody for the files?
3. How soon will this take place?
4. Status of the branch and/or central warehouse lease payments? If files are at any branches or a warehouse are they in jeopardy of being taken by the landlord for non-payment of the lease obligations?

1 5. Our department has been receiving several inquiries from
2 vendors regarding checks they have received from
3 Arizona Title drawn on US Bank and the checks have
4 been returned for non-sufficient funds. Would you please
5 provide us with your intentions on honoring these
6 obligations? Do you have a phone number and contact
7 person to refer these people to?

8 6. Please provide the annual audited financial statements for
9 all of the above companies, or the parent company,
10 Mercury Companies, Inc. They were required to be
11 submitted to our department no later than April 30, 2008.

12 16. Ms. Prill testified that, without the requested information, the Department
13 cannot regulate Respondent or protect the public from escrow agent licensees who hold
14 escrow funds on behalf of customers. Respondent violated Arizona law in failing to
15 provide the requested information.

16 17. Respondent's statutory agent, according to the Arizona Corporation
17 Commission's public access system, is C T Corporation System, at 2394 E. Camelback
18 Rd., Phoenix, AZ 85016.

19 18. The Department sent a copy of its Notice of Hearing to Revoke to C T
20 Corporation System via certified mail. The Department received the return receipt, which
21 indicated that C T Corporate System had accepted the certified mail.

22 19. The Department also sent a copy of its Notice of Hearing to Revoke to Jerrold
23 G. Hauptman at Mercury via certified mail. The Department received the return receipt,
24 which indicated that Mercury had accepted the certified mail.

25 20. According to the Arizona Corporation Commission's records, Respondent
26 filed an annual report on May 2, 2008 and its corporate status is current and in good
27 standing.

28 21. The Department's Assistant Superintendent Mr. Giallanza has extensive
29 experience in the escrow industry. When he heard that Respondent might close its
30 Arizona operations, he assessed the situation and implemented a plan of action. Mr.
Giallanza testified that the Department first attempted to arrange for an orderly surrender
of Respondent's escrow agent license.

1 22. After the Department sent out numerous notices and requests for information
2 and received nothing that had been requested from Respondent, Mr. Giallanza testified
3 that it became clear that Respondent presented an immediate threat and that it was
4 necessary to suspend Respondent's escrow agent license to protect the public. Mr.
5 Giallanza testified that it was critical that the Department obtain information on
6 Respondent's escrow operations because, unless the Department can reconcile
7 Respondent's escrow accounts, it may be weeks, months, or years before the
8 Department learns of any damage caused by Respondent's mishandling or
9 misappropriation of escrow funds held in trust for customers. Without the requested
10 information, the Department cannot reconcile Respondent's accounts.

11 23. Mr. Giallanza testified that the Department is ready, able, and willing to work
12 with Respondent to allow it to close its Arizona business and surrender its license in an
13 orderly fashion. But the Department is completely in the dark about the status of
14 Respondent's accounts. The Department has been forced to use other methods to
15 obtain information, such as contacting Respondent's corporate parent, but even these
16 methods have been unsuccessful. To protect the public safety, the Department has no
17 choice but to revoke Respondent's license.

18 24. Mr. Giallanza testified that Arizona law allows the Department to impose a
19 civil penalty in the amount of \$5,000 per day per violation. Respondent has committed
20 two major violations: (1) It has failed to provide an updated audited financial statement for
21 the year 2008; and (2) It has failed to provide the information and documents that the
22 Department has requested. Mr. Giallanza testified that, at a minimum, Respondent
23 should be assessed a civil penalty in the amount of \$20,000, or \$10,000 per violation,
24 although the Department could seek more.

25 25. The Department also assessed an examination fee of \$1,365.00 against
26 Respondent.

CONCLUSIONS OF LAW

- 27 1. This matter lies within the Department's jurisdiction.²
28
29

30 ² See A.R.S. § 6-121 *et seq.*

1 2. The copies of the notice of the hearing that the Department mailed to
2 Respondent at its address of record, its statutory agent of record, and to its parent
3 corporation were reasonable and Respondent is deemed to have received notice of the
4 hearing.³

5 3. The Department bears the burden of proof and must establish Respondent's
6 statutory violations by a preponderance of the evidence.⁴ "A preponderance of the
7 evidence is such proof as convinces the trier of fact that the contention is more probably
8 true than not."⁵

9 4. A preponderance of the evidence is "[t]he greater weight of the evidence, not
10 necessarily established by the greater number of witnesses testifying to a fact but by
11 evidence that has the most convincing force; superior evidentiary weight that, though not
12 sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair
13 and impartial mind to one side of the issue rather than the other."⁶

14 5. The Department has established that Respondent failed to answer the Notice
15 of Hearing and that, therefore, under A.A.C. R20-40-1209(D), the Superintendent may
16 deem Respondent to have admitted all of the Notice of Hearing's factual allegations and
17 charged violations. The Department has also established by a preponderance of the
18 evidence each of the factual allegations and charged statutory violations in the Notice of
19 Hearing.

20 6. The Department has established that Respondent violated A.R.S. § 6-832(A)
21 and (B) by failing to timely file its audited financial statements for the year ending on
22 December 31, 2007 with the Superintendent and that the Department did not receive
23 the audited financial statement for 2007 until June 16, 2008.

24 7. The Department has established that Respondent violated A.R.S. §§ 6-
25 123(3) and 6-837(B) by failing to provide to the Department all information requested by
26 the Department's letter of August 4, 2008.

27
28 ³ See A.R.S. §§ 41-1092.04; 41-1092.05(D); 41-1061(A).

29 ⁴ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372,
30 249 P.2d 837 (1952).

⁵ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁶ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

8. Under A.R.S. § 6-817(A)(8), Respondent's failure to furnish information required by statute is a ground to revoke its license.

9. Under A.R.S. § 6-817(A)(2), Respondent's failure to comply with statutes governing escrow agents is an additional ground to revoke its license.

10. Especially in view of Respondent's failure to present any evidence in defense of its license, the Department has also established that imposition of a civil penalty in the amount of twenty thousand dollars (\$20,000.00) under A.R.S. § 6-132 is appropriate.

11. The Department has also established that it is appropriate to assess Respondent a late fee of one thousand one hundred fifty dollars (\$1,150.00) under A.R.S. § 6-816(B), constituting a fee of twenty-five dollars (\$25.00) for ninety days past the April 30, 2008 deadline for filing an audited financial statement for the year ending December 31, 2007.

12. Pursuant to A.R.S. § 6-125(B)(4), the Department has also established that it is appropriate to assess an examination fee in the amount of one thousand three hundred sixty-five dollars (\$1,365.00) under A.R.S. § 6-122(B)(3), which equals sixty-five dollars (\$65.00) for every hour that the Department's employees spent attempting to examine Respondent.

RECOMMENDED ORDER

Based on the foregoing, it is recommended that the Superintendent of the Department revoke Respondent Financial Title Company's Escrow Agent License No. EA 0905637.

It is further recommended that the Superintendent assess Respondent a civil penalty in the amount of twenty thousand dollars (\$20,000.00) under A.R.S. § 6-132, a late fee of one thousand one hundred fifty dollars (\$1,150.00) under A.R.S. § 6-816(B), and an examination fee in the amount of one thousand three hundred sixty-five dollars (\$1,365.00) under A.R.S. § 6-122(B)(3).

Done this day, October 27, 2008.

Diane Mihalsky
Administrative Law Judge

1 Original transmitted by mail this
2 28 day of October, 2008, to:

3 Arizona Department of Financial Institutions
4 Felecia A. Rotellini, Superintendent
5 ATTN: Susan Longo
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 By Chris Fishbeck